

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
M. L. NATION,

Appellant,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 81-84

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

This matter, the appeal of a denial of an application for a Flood Control Zone Permit to construct a single-family dwelling, came on before the Pollution Control Hearings Board on December 21, 1981, at Lacey, Washington. Seated for and as the Board were: Nat W. Washington, Chairman; David Akana; and Gayle Rothrock (presiding). Reporter Kim Otis recorded the proceedings. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant represented himself and was accompanied by his spouse. Respondent was represented by Assistant Attorney General

1 Robert E. Mack. No witness from respondent agency was present.

2 Appellant testified for himself and both parties entered  
3 exhibits. From the testimony heard and the exhibits examined the  
4 Board makes these

5 FINDINGS OF FACT

6 I

7 M. L. Nation and his spouse own and operate farm property outside  
8 Everett near the confluence of the Ebey Slough and the Snohomish  
9 River. It is within the bounds of a state-established flood control  
10 zone and, specifically, within a 100-year hydraulic floodway.

11 II

12 The Nation family property is two farm parcels originally  
13 classified on their plats as 34 acres and 25 acres in area. The total  
14 dry land area of the two parcels now is approximately 55 acres because  
15 of a diking district pipeline and its right-of-way running through the  
16 property.

17 Since 1963 these owners have farmed the land, maintained 120 head  
18 of cattle, built and improved facilities on the parcels, worked with  
19 Snohomish County Diking District #1 on flood control and recovery  
20 projects, and maintained the two single-family homes on the  
21 parcels--until one was damaged by a flood.

22 IV

23 Appellant Nation obtained a flood control zone permit in 1979 from  
24 respondent agency allowing him to level, clear, and construct a  
25 machine shed for the property. In the process of leveling and  
26 clearing, appellant cleared the remains of the one flood-damaged  
27

1 house, not having thoughts about rebuilding immediately on his mind.

2 V

3 As plans for a replacement single-family dwelling materialized,  
4 appellant planned for raising the site elevation to six feet above the  
5 1975 flood level (thirteen feet above mean sea level). Also  
6 envisioned was the placement of utilities' lines and services above,  
7 or insulated from, potential flood inundation areas. Not envisioned  
8 was the Corps of Engineers projected setting of the 100-year flood  
9 plain elevation at the building site's center at 17.5 feet above sea  
10 level nor the Department of Ecology's construing of the home building  
11 permit application as something other than a single-family farmhouse  
12 dwelling replacement.

13 VI

14 Respondent agency's Resource Management section of its Northwest  
15 Washington regional office visited the proposed building site on  
16 January 29, 1981, and examined maps and the Corps of Engineers  
17 District files on flood control matters. Respondent ultimately  
18 determined that state laws and regulations would not permit the Nation  
19 application to be granted.

20 VII

21 Any Conclusion of Law which should be deemed a Finding of Fact is  
22 hereby adopted as such.

23 From these Findings the Board enters these

24 CONCLUSIONS OF LAW

25 I

26 The Board has jurisdiction over these persons and these matters.

1 RCW 43.21B.

2 II

3 The M. L. Nation family has two parcels in their farm property  
4 upon which two single-family farmhouse dwellings could reasonably be  
5 situated, and, in fact, were, prior to 1976.

6 III

7 Appellant's application No. 1-4444-5 meets the test of a  
8 replacement single-family farmhouse dwelling in a floodplain. RCW  
9 86.16 and WAC 508-60-040. The application could be approved with  
10 appropriate conditions.

11 While the single-family farmhouse proposed technically does not  
12 replace an existing farmhouse--there being no house at the subject  
13 site now--the Nation's proposed activities are consistent with the  
14 entire provision of WAC 508-60-040(4)(1); i.e., the house being  
15 replaced must be entirely replaced, and appellant has already cleared  
16 the remains and basically prepared the site. Further, the site  
17 appears to be the only real location for a farmhouse on the farmsite  
18 outside the floodway.

19 Nation's proposed activity is not sufficiently definite in this  
20 record to demonstrate compliance with the remaining provisions of WAC  
21 508-60-040(4). However, these provisions may be addressed through the  
22 use of appropriate conditions in a permit which would show to  
23 respondent, compliance with the regulations. Specifically, that

24 A. The permit shall specify a date for completion of  
25 the construction.

26 B. The elevation of the lowest habitable floor of the  
27 residence, including basement, shall be one foot

1 higher than the one hundred year flood elevation.

2 C. New and replacement water supply systems shall be  
3 designed to minimize or eliminate infiltration of  
flood waters into the system.

4 D. New and replacement sanitary sewage systems shall  
5 be designed and located to minimize or eliminate  
6 infiltration of flood waters into the system and  
discharge from the systems into flood waters.

7 E. All other utilities and connections to public  
8 utilities shall be designed, constructed, and located  
to minimize or eliminate flood damage.

9 If the Nations cannot show compliance with the foregoing through means  
10 as may be reasonably required by respondent, the permit would have no  
11 force or effect.

#### 12 IV

13 Appellant has demonstrated a history of working with flood control  
14 planning and relief and securing permits for projects in the subject  
15 floodplain.

#### 16 V

17 Respondent did not produce a witness at hearing to defend and  
18 explain documents or to comment on facts and conclusions therein or to  
19 rebut testimony of appellant.

20 From these Conclusions the Board makes this  
21  
22  
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24  
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26

ORDER

M. L. Nation's Flood Control Zone Application No. 1-4444-5 denial by respondent agency is set aside and the application remanded to the Department of Ecology for approval commensurate with conditions set forth in Conclusion of Law III.

SO ORDERED.

DONE this 10<sup>th</sup> day of February, 1982.

POLLUTION CONTROL HEARINGS BOARD

  
NAT W. WASHINGTON, Chairman

  
GAYLE ROTHROCK, Vice Chairman

  
DAVID AKANA, Member